

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SM Kids, LLC, as successor-in-interest to
Stelor Productions, LLC,

Plaintiff,

-against-

Google LLC et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 3/28/2021

1:18-cv-02637 (LGS) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

WHEREAS, pursuant to the Court's Order, dated March 12, 2021 (ECF No. 220), Plaintiff's counsel emailed to the Court on March 26, 2021, for its *in camera* review, the exemplar documents identified in paragraph 2 of the Order that remain at issue;¹ and

WHEREAS, the Court has conducted a preliminary review of the exemplar documents; and

WHEREAS, certain redacted Mazer-related documents (*i.e.*, "SteveGarchik!.doc" and "Galloway_email_googles.doc") were forwarded to Phillip Peckman ("Peckman") (*see* 20201106_817-000022060 and SMKIDS018508_SMKIDS007); and

WHEREAS, the Court is unclear as to the roles played by certain individuals and/or firms who are copied on some of the exemplar emails; and

¹ The Court was advised in the email that no exemplar documents were provided regarding Messrs. Auerbach, Dennis, Levine and Shane, since the parties had resolved their disputes about communications involving them. The Court also was advised in the email that, in some instances, fewer exemplar documents were provided because the Court identified more exemplar documents than exist for the challenged name(s) or because the parties selected the same exemplar documents for the Court's review.

WHEREAS, certain of the exemplar documents (and/or certain redactions from the exemplar documents) on their face do not appear to be protected by the attorney-client privilege and/or work product doctrine; and

WHEREAS, the Court requires clarification regarding certain points.

NOW, THEREFORE, it is hereby ORDERED that, in its submission to be filed on April 22, 2021, Plaintiff shall address the following:

1. In view of Plaintiff's agreement to produce communications with Peckman that are not protected by the work product doctrine (*see* 3/9/2021 Joint Letter, ECF No. 211, at 8),² shouldn't the redacted documents "SteveGarchik!.doc" and "Galloway email googles.doc" be produced in full, since these documents were forwarded to Peckman (*see* SMKIDS018508) and the redactions to them do not appear to be protected under the work product doctrine (*see* SMKIDS018509, 18-19)?
2. As of July 2010, who did the law firms Hughes & Bentzen, Smith Katzenstein, Ashby & Geddes and Gordon & Simmons represent (*see* 20201106_817-000034746, 20201106_817-000030195, ID000871, SMKIDS018742-43)?
3. Is Mark Silverman or Shilpa Rao an attorney (*see* ID001307, 20201106_817-000053050 and SMKIDS019530-31)?
4. As of December 2008, who did the law firm Coffey Burlington represent (*see* ID001307)?

² *See also* Ansari 3/8/21 Email, ECF No. 210-9, at 2 ("SM Kids will produce documents on its log exchanged with Mr. Peckman to the extent those documents are not protected work product.").

5. Since all that is redacted from SMKIDS022347-50 are portions of an ABA number and account number, shouldn't this document be removed from the privilege log?
6. Since the information that is redacted from SMKIDS025229-30 is disclosed in the document produced at SMKIDS022347-50, shouldn't SMKIDS025229-30 be produced in full?
7. What is the basis for withholding from production ID004400, since it does not appear to reflect communications with counsel or legal advice?³
8. Who is Edward Ettin and what role did he play in March 2008 (*see* 20201106_817-000028178)?
9. Who is "Henry Epstien [ideonics@comcast.net]" and what role did he play in March 2008 (*see* 20201106_817-000028178)?
10. Who is Igor Gruendl and what role did he play in March 2008 (*see* 20201106_817-000028178)?
11. What is the basis for the redactions to SMKIDS019221-22, since the redactions do not appear to reflect legal advice?
12. Who is Mike Mann and what role did he play in September 2009 (*see* SMKIDS019469)?
13. Who is Elan Blutinger and what role did he play in December 2008 (*see* SMKIDS019542-43, 19546)?

³ The Court notes that any even arguably privileged portions of ID004400 were produced at SMKIDS022347-50.

14. Was the draft of settlement agreement (at 20201106_817-000027555) that was forwarded by email by Steve Garchik to Scot Thomas (see 20201106_817-000027554) also provided to Google in or about December 2008, or was it an internal draft?
15. Who is Erik Odmark and what role did he play in December 2010 (see ID001728)?
16. In the March 9, 2021 Joint Letter, Defendant stated that Plaintiff “agreed that it would produce all communications including [Andrew] Smith,” but Plaintiff stated that it would “produce the two emails on its privilege log exchanged with Andrew Smith.” (3/9/21 Joint Letter at 8.) ID005545 contains an October 21, 2010 email from Theodore Koenig to asmith@mcclean.com, among others. Does Plaintiff agree to produce this email? If not, who is Andrew Smith and what role did he play in October 2010?
17. As of March 2016, who did the law firm Snider Weinstein represent (see 20201106_817-000021609)?
18. As of July 2015, who did Marc S. Bekerman, Esq. represent (see 20201106_817-000032147, SMKIDS019099-101)?
19. In SMKIDS025891, what was Sandy Garchik Katzman being asked to confirm and why?
20. Was the law firm Ober Kaler ever retained by Plaintiff or any of its predecessor entities (see PLS000128-31)?
21. What is the basis for the redactions to TARAL001009, since the redactions do not appear to reflect legal advice?

SO ORDERED.

Dated: New York, New York
March 28, 2021

A handwritten signature in black ink, reading "Stewart D. Aaron", is positioned above a horizontal line.

STEWART D. AARON
United States Magistrate Judge